

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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IN RE:

OLMEDO PALAGUACHI,

Debtor.

=====X

November 8, 2021

10:00 A.M.

Case No. 121-41642-ESS

Hon. ELIZABETH S. STONG

**NOTICE OF MOTION**

PLEASE TAKE NOTICE, that upon the within application, Krista M. Preuss, Chapter 13 Trustee will move this court before the Hon. Elizabeth S. Stong, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, at 271 Cadman Plaza East, Brooklyn, New York Courtroom 3585, on November 8, 2021 at 10:00 AM or as soon thereafter as counsel can be heard, for an order pursuant to 11 U.S.C. 1307(c) dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the bankruptcy court and served upon the Chapter 13 Trustee, Krista M. Preuss, Esq., no later than seven (7) days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Bankruptcy Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York  
October 20, 2021

/s/ Krista M. Preuss  
KRISTA M. PREUSS, TRUSTEE  
100 JERICHO QUADRANGLE, STE 127  
JERICHO, NY 11753  
(516) 622-1340

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IN RE:

Case No: 121-41642-ESS

OLMEDO PALAGUACHI,

Hon. ELIZABETH S. STONG

**APPLICATION**

Debtor.

=====X

TO THE HONORABLE ELIZABETH S. STONG, U.S. BANKRUPTCY JUDGE:

Nathan Z. Kaufman, Staff Attorney to KRISTA M. PREUSS, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on June 23, 2021, and, thereafter, KRISTA M. PREUSS was duly appointed and qualified as Trustee.

2. The Debtor's proposed Chapter 13 Plan (hereinafter the "Plan"), dated XXXXX, provides for a monthly Plan payment of \$100 per month, commencing August 1, 2021, for a period of 36 months. The Plan proposes full repayment to all allowed secured and priority proofs of claim, as well as a pro rata distribution of at least \$100 to all timely filed general unsecured proofs of claim. The Plan also provides that the Debtor will seek to avoid the judgment lien of creditor Milky Way II.

3. Based upon the Plan, it appears Debtor has a domestic support obligation to oblige Rosa Perez. However, to date Debtor has failed to disclose the obligee's address in Schedule E/F. Debtor has thereby prevented the Trustee from fulfilling her statutory duties pursuant to 11 U.S.C. §1302(d), and thus failed to comply with the Debtor's statutory duties pursuant to 11 U.S.C. §521(a)(3). The Trustee therefore seeks dismissal of this case.

4. The Trustee objects to the confirmation of the Plan because the Plan does not specifically provide for treatment of all secured creditors as required by 11 U.S.C § 1325(a)(5) (including unscheduled *in rem* claim of PHH Mortgage Services, designated Claim 3 on the Claim Register; and scheduled claim of N.Y.C. Dep't of Buildings).

5. The Trustee objects to the confirmation of the Plan because the Debtor has failed to file a motion to avoid the judgment lien of Milky Way II. The Plan therefore fails to satisfy 11 U.S.C. §1325(a)(5) with respect to the claim of Milky Way II, and, additionally, the Debtor has failed to comply with the terms of the Plan as required by 11 U.S.C. §1325(a)(6).

6. The Trustee objects to the confirmation of the Plan because the Plan provides for payments to commence more than 30 days after the order for relief, in violation of 11 U.S.C. §1326(a)(1).

7. Furthermore, the Debtor has failed to:

- a. commence making Chapter 13 Plan payments to the Trustee as required by 11 U.S.C. § 1326(a)(1); and
- b. comply with 11 U.S.C § 1325(a)(6) in that the Debtor has failed to submit timely Chapter 13 Plan payments to the Trustee, and is \$300.00 in arrears through September 2021; and

- c. provide the Trustee with a copy of a federal income tax return or transcript for the most recent year, 7 days before first meeting of creditors pursuant to 11 U.S.C. §521(e)(2)(A)(i); and
- d. provide the Trustee with disclosure documentation as required by E.D.N.Y LBR 2003-1; and
- e. appear and be examined at the Section 341 Meeting of Creditors scheduled for September 1, 2021, as required by 11 U.S.C. §343; and
- f. serve the plan on the trustee and all creditors within 7 days of filing of the plan and file proof of service there of as required by E.D.N.Y. LBR 3015-1(b).

8. The Plan cannot be confirmed and as a result a delay has occurred that is prejudicial to the rights of creditors. The case must be dismissed under 11 U.S.C. § 1307(c)(1) and (c)(5).

9. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within the meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order dismissing this Chapter 13 case, and such other and further relief as may seem just and proper.

Dated: Jericho, New York  
October 20, 2021

s/Nathan Z. Kaufman  
Nathan Z. Kaufman, Staff Attorney  
Chapter 13 Trustee Krista M. Preuss

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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IN RE:

OLMEDO PALAGUACHI,

Debtors.

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Case No: 121-41642-ESS

CERTIFICATE OF SERVICE

I, Nathan Z. Kaufman, declare under penalty of perjury that I have sent the attached document to the below listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Notice by first class mail was sent to the following persons/entities:

OLMEDO PALAGUACHI  
35-04 92nd STREET  
JACKSON HEIGHTS, NY 11372

Notice by electronic transmission generated by the ECF system to the following person/entities pursuant to Bankruptcy Rule 9036:

KARAMVIR DAHIYA, ESQ., [karam@bankruptcypundit.com](mailto:karam@bankruptcypundit.com)  
Deutsche Bank National Trust Company c/o Robertson, Anschutz, Schneid, Crane & Partners, PLLC,  
[kaday@raslg.com](mailto:kaday@raslg.com)  
Milky Way II LLC c/o Zimmerman Law, P.C., [wholeoffice@zimmlaw.com](mailto:wholeoffice@zimmlaw.com)

Transmission times for electronic delivery are Eastern Time zone.

This October 20, 2021

/s/Nathan Z. Kaufman  
Nathan Z. Kaufman, Staff Attorney  
Office of the Standing Chapter 13 Trustee  
Krista M. Preuss  
100 Jericho Quadrangle; Ste 127  
Jericho, NY 11753  
(516) 622-1340

CASE NO: 121-41642-ESS  
Hon. ELIZABETH S. STONG

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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Debtor.

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NOTICE OF MOTION AND APPLICATION TO DISMISS CASE

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KRISTA M. PREUSS, TRUSTEE  
100 JERICO QUADRANGLE, STE 127  
JERICO, NY 11753  
(516) 622-1340